

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

SAFECO INSURANCE COMPANY OF	)	
AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 06-4294-CV-C-NKL
	)	
MAX E. STEPHENSON, II and	)	
SCOTT F. STEPHENSON, Co-Personal	)	
Representatives of the Estate of Ted E.	)	
Stephenson, deceased, DANIEL PAYNE,	)	
and TERRY FOGARTY,	)	
	)	
Defendants.	)	

**ORDER**

On December 14, 2006, Plaintiff Safeco Insurance Company of America (“Safeco”) filed a declaratory judgment action against Defendants Max E. Stephenson, II and Scott F. Stephenson, as personal representatives of the estate of Ted E. Stephenson; Daniel Payne; and Terry Fogarty. Safeco seeks a declaratory judgment that a homeowner’s insurance policy it issued to Ted Stephenson does not provide coverage for an accident that occurred at Stephenson’s home and resulted in the death of Katherine Payne, Defendant Daniel Payne’s mother.

On January 4, 2007, the Defendants Stephenson were served with process. To date, neither has responded to Safeco’s Complaint. On May 23, 2007, the Court Clerk filed an entry of default against the Defendants Stephenson pursuant to Fed. R. Civ. P.

55(a). Pending before the Court is Safeco's Motion for Default Judgment [Doc. # 15] as to the Defendants Stephenson.

"When a default is entered against one defendant in a multi-defendant case, the preferred practice is for the court to withhold granting a default judgment until the trial of the action on the merits against the remaining defendants." *Northland Ins. Co. v. Cailu Title Corp.*, 204 F.R.D. 327, 330 (W.D. Mich. 2000) (quotation omitted). In contrast to the Defendants Stephenson's default, Defendant Daniel Payne has vigorously opposed Safeco's declaratory judgment claim. Because at least one non-defaulting defendant remains in this case, and in an effort to avoid inconsistent verdicts, the Court finds that no final decree on the merits should be entered against the defaulting Defendants Stephenson until the case is disposed of as to the remaining defendants. *See Frow v. De La Vega*, 82 U.S. 552, 554 (1872); *United States ex rel. Costner v. United States*, 56 Fed. Appx. 287, 288 (8th Cir. 2003) (citation omitted); *Pfanenstiel Architects, Inc. v. Chouteau Petroleum Co.*, 978 F.2d 430, 433 (8th Cir. 1992).

Therefore, Safeco's Motion for Default Judgment [Doc. # 15] is DENIED  
WITHOUT PREJUDICE.

IT IS SO ORDERED.

s/ Nanette K. Laughrey  
NANETTE K. LAUGHREY  
United States District Judge

Dated: July 9, 2007  
Jefferson City, Missouri